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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6976

CELA

DATE COMPLAINT FILED: October 26, 2015

DATE OF NOTIFICATION: November 2, 2015

RESPONSE RECEIVED: November 24, 2015

DATE ACTIVATED: April 20, 2016

EXPIRATION OF SOL: August 24, 2020

ELECTION CYCLE: 2016

COMPLAINANT:

Anthony Thomas, Jr.

RESPONDENTS:

Johnny W. Streets, Jr., City Council Committee
Lofton Island Developments LLLP
Lofton Island GP, LLC
Lofton Island Holdings, LLLP

**RELEVANT STATUTE AND
REGULATION:**

52 U.S.C. § 30121
11 C.F.R. § 110.20

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint in this matter alleges that the City Council Committee for Johnny W. Streets, Jr. (the "Streets Committee") violated the Federal Election Campaign Act of 1971, as amended, (the "Act") by accepting contributions from three foreign corporations. The Complaint further alleges that the corporations violated the Act by making the contributions. As support for the allegations, the Complaint attaches excerpts from the Streets Committee's financial disclosures that show the receipt of \$3,000 in contributions from three entities with addresses in Canada.

1 The Respondents have provided documentation showing that the contributing entities
2 were formed and registered in Florida. Moreover, they assert that the Streets Committee
3 properly reported the contributions, and that it refunded them days after learning that they might
4 be illegal.

5 Based on the available information, we recommend that the Commission exercise its
6 prosecutorial discretion to dismiss the allegations that the Respondents violated the Act by
7 making or receiving prohibited foreign national contributions, and close the file.

8 II. FACTUAL BACKGROUND

9 In 2015, Johnny W. Streets, Jr., ran for reelection to the City Council of Fort Myers,
10 Florida. The Streets Committee itemized its contributions and expenditures in "Treasurer's
11 Reports" filed with the Fort Myers City Clerk's Office.¹ In one such report, the Streets
12 Committee disclosed the receipt of separate \$1,000 contributions on August 24, 2015, from three
13 entities — Lofton Island Developments LLLP; Lofton Island GP, LLC; and Lofton Island
14 Holdings, LLLP (collectively, the "Lofton Entities").² The Streets Committee listed the same
15 Nova Scotia, Canada, address for each of the Lofton Entities.³

16 Streets was reelected on September 15, 2015. On October 14, 2015, the *Fort Myers*
17 *News-Press* reported that the Streets Committee violated federal campaign finance laws by
18 accepting contributions from the Lofton Entities, which it described as "tied to . . . an address in
19 Nova Scotia, Canada."⁴ The article, which is attached to the Complaint, described the Streets

¹ Compl. at 1 (Oct. 26, 2015).

² *Id.*, Attach. (Campaign Treasurer's Report).

³ *Id.*

⁴ See Compl., Attach. (Cody Dulaney, *Campaign Laws Violated in Fort Myers, Money to Be Given Back*, FORT MYERS NEWS-PRESS, Oct. 14, 2015).

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1 campaign as having been unaware of any problems associated with the contributions and willing
2 to return the money.⁵

3 The Complaint claims that each of the contributions at issue came "from a foreign
4 company," based on the Canadian address listed in the Streets Committee's Treasurer's Report.⁶
5 Accordingly, the Complaint alleges that the Lofton Entities violated the Act's prohibition on
6 foreign national contributions, and that the Streets Committee violated the Act by accepting such
7 contributions.⁷

8 The Streets Committee asserts that it disclosed all details about the contribution as
9 required by law and explains that the Canadian address the Committee reported for each of the
10 Lofton Entities was taken from the contribution checks.⁸ In its Response, which includes
11 affidavits from Streets and the Committee's treasurer, the Streets Committee states that it was
12 first alerted that the contributions might have been illegal two days before the article was
13 published, when a reporter and the City Clerk's Office contacted Streets.⁹ The Committee
14 subsequently issued refund checks to the Lofton Entities on October 16, 2015, using surplus
15 campaign funds, which the Lofton Entities deposited.¹⁰

16 The Respondents explain that the Lofton Entities were all formed and registered in
17 Florida, and that the contributions were made from bank accounts in Miami.¹¹ The Lofton

⁵ *Id.*

⁶ Compl. at 1.

⁷ *Id.*

⁸ Streets Resp. at 2 (Nov. 17, 2015).

⁹ *Id.*

¹⁰ *Id.* at 2-3; Lofton Entities Resp. at 2 (Nov. 24, 2015).

¹¹ Streets Resp. at 1-2; Lofton Entities Resp. at 1-2.

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1 Entities assert that their primary purpose is to own and operate a high-rise development project
2 in Streets's district.¹² The Lofton Entities further state that the funds contributed to the Streets
3 Committee originated from income generated in Florida and were "not financed by any of the
4 [entities'] foreign owners."¹³

5 III. LEGAL ANALYSIS

6 The Act and Commission regulations prohibit a foreign national from making a
7 contribution — directly or indirectly through any other person — in connection with an election
8 to any political office.¹⁴ The term "foreign national" includes "a partnership, association,
9 corporation, organization or other combination of persons organized under the laws of or having
10 its principal place of business in a foreign country."¹⁵ The Commission's regulations further
11 provide that a "foreign national shall not direct, dictate, control, or directly or indirectly
12 participate in the decision-making process of any . . . corporation . . . with regard to . . . election-
13 related activities."¹⁶ This prohibition includes "decisions concerning the making of
14 contributions, donations, expenditures, or disbursements."¹⁷ Unlike most other provisions of the

¹² Lofton Entities Resp. at 1.

¹³ *Id.* at 2. The Response does not provide a full explanation of the Lofton Entities' ownership or governance, but does note that Neil Morley serves as the Manager of Lofton Island GP LLC, the general partner of Lofton Island Holdings LLLP and the President of Lofton Island Developments GP LLC. *Id.* at 1. Public records indicate that Morley lives in Canada. *See, e.g.,* Lofton Island Devs. GP LLC, 2016 Fla. Ltd. Liab. Co. Annual Report, Apr. 20, 2016 (identifying Morley as "President" with an address in Nova Scotia, Canada). The Lofton Entities' current Annual Reports also provide a Canadian address for every listed manager and nearly every partner. *See* Lofton Island Devs. LLLP, 2016 Fla. Ltd. P'ship Annual Report, Apr. 23, 2016; Lofton Island GP LLC, 2016 Fla. Ltd. Liab. Co. Annual Report, Apr. 23, 2016; Lofton Island Holdings LLLP, 2016 Fla. Ltd. P'ship Annual Report, Apr. 23, 2016.

¹⁴ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c). A "foreign national" is an individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence. 52 U.S.C. § 30121(b).

¹⁵ 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

¹⁶ 11 C.F.R. § 110.20(i).

¹⁷ *Id.*

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1 Act, the prohibition against contributions by foreign nationals applies to any election for political
2 office, including state and local offices.¹⁸

3 Because foreign nationals are not permitted to make direct or indirect contributions, in
4 determining whether a domestic subsidiary or affiliate of a foreign national corporation is
5 permitted to make contributions (where corporate contributions are otherwise permitted), the
6 Commission has considered two factors — the source of the funds and the nationality status of
7 the decision-makers involved in the contribution process.¹⁹ The Commission has not permitted
8 domestic corporations to make contributions where the funds originated with a foreign national
9 corporation on the basis that so doing would permit the latter to make indirect contributions in
10 violation of the Act.²⁰ And even where the funds used for political contributions by a domestic
11 company are generated domestically, the Commission has considered the nationality of the
12 decision-makers in assessing the legality of the contributions. The Commission has conditioned
13 approval of contributions by domestic subsidiaries of foreign nationals by requiring that foreign
14 nationals not participate in any way in the decision-making process as to the contributions.²¹

15 The Complaint alleges that the Lofton Entities are foreign nationals because, according to
16 the contribution checks, each has a Canadian address. The Respondents have countered this
17 allegation by submitting documentation demonstrating that the Lofton Entities were formed and

¹⁸ *United States v. Kanchanalak*, 192 F.3d 1037, 1049 (D.C. Cir. 1999) (concluding that the Commission has consistently interpreted 2 U.S.C. 441e (now 52 U.S.C. § 30121) as applicable to federal, state, and local elections).

¹⁹ See, e.g., MUR 6093 (Transurban Grp.); Advisory Op. 2006-15 (TransCanada).

²⁰ See, e.g., Advisory Op. 1989-20 (Kuilima); AO 2006-15.

²¹ See, e.g., AO 1989-20 at 2 (“[N]o director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making the proposed contributions.”); First Gen. Counsel’s Rpt. at 5, MUR 6093 (concluding that the Act was violated where foreign company’s “Board of Directors directly participated in determining whether to continue the political contributions policy of its subsidiaries”).

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1 registered in Florida and asserting that they "primarily operate" there.²² Accordingly, although
2 they have not offered an explanation for the address listed on the checks, the entities themselves
3 do not appear to be foreign nationals under the Act. The Lofton Entities further assert that the
4 funds contributed to the Streets campaign "were from income generated in the State of Florida
5 and not financed by any of the foreign owners."²³ They do not provide any further explanation,
6 however, including whether they are otherwise significantly funded by foreign national parent
7 companies. Even if the Lofton Entities did use funds derived exclusively from domestic sources,
8 the record provides no information identifying the decision-makers involved in the contribution
9 process, including whether foreign nationals were involved. And as discussed above, the
10 available information indicates that all of the reported officers for the Lofton Entities have
11 Canadian addresses. The record therefore does not conclusively establish whether the Lofton
12 Entities violated the Act by contributing to the Streets Committee.

13 The Act also prohibits persons from knowingly soliciting, accepting, or receiving a
14 contribution or donation from a foreign national.²⁴ The Complaint alleges that the Streets
15 Committee violated the Act by accepting the Lofton Entities' contributions. Just as the record
16 does not provide sufficient information to determine whether the Lofton Entities violated the Act
17 by making the contributions, it correspondingly does not establish whether the Streets
18 Committee violated the Act by knowingly accepting them.²⁵

²² See Streets Committee Resp., Attach. (Fla. Dept. of State Certificates of Status for the Lofton Entities); Lofton Entities Resp. at 1, Attach. (Fla. Dept. of State formation documents for the Lofton Entities).

²³ Lofton Entities Resp. at 2.

²⁴ See 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(a)(4), (g).

²⁵ The Commission's regulations provide that "knowing" acceptance of a foreign national contribution in violation of the Act includes circumstances in which a person is "aware of facts that would lead a reasonable person to inquire whether the source of funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry." 11 C.F.R. § 110.20(a)(4)(iii). Here, the Streets Committee's contribution records

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1 The available information indicates that the Respondents might have violated the Act's
2 prohibition against making and accepting foreign national contributions. Nevertheless, the facts
3 in this matter support dismissing the Complaint as a matter of prosecutorial discretion. The
4 potential amount in violation (\$3,000) is fairly small, and an investigation would be necessary to
5 determine whether foreign nationals participated in the decision to make the contributions (or
6 subsidized the contributions themselves) such that the Respondents did in fact violate the Act.
7 Further, the Streets Committee promptly issued full refunds of the contributions as soon as it
8 recognized that they might be prohibited.

9 Based on these circumstances, and in furtherance of the Commission's priorities relative
10 to other matters, we recommend that the Commission exercise its prosecutorial discretion and
11 dismiss the alleged violations of 52 U.S.C. § 30121 and 11 C.F.R. § 110.20 as to the Streets
12 Committee and the Lofton Entities.²⁶

13 IV. RECOMMENDATIONS

- 14
- 15 1. Dismiss the allegation that the Johnny W. Streets, Jr. City Council Committee
- 16 violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20;
- 17
- 18 2. Dismiss the allegation that Lofton Island Developments LLLP, Lofton Island GP
- 19 LLC, and Lofton Island Holdings LLLP violated 52 U.S.C. § 30121 and
- 20 11 C.F.R. § 110.20;
- 21
- 22 3. Approve the attached Factual and Legal Analysis;
- 23
- 24 4. Approve the appropriate letters; and
- 25


indicate that it was aware that the Lofton Entities' contribution checks displayed a Canadian address, which likely would have led a reasonable person to inquire whether the contributions came from a foreign national.

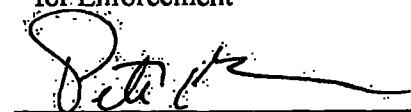
²⁶ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

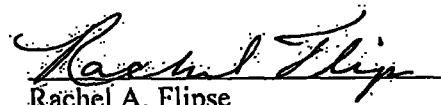
5. Close the file.

DATE: 7.19.16

Daniel A. Petalas
Acting General Counsel


Stephen A. Gura
Deputy Associate General Counsel
for Enforcement


Peter G. Blumberg
Assistant General Counsel


Rachel A. Flipse
Attorney

Attachment:

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Johnny W. Streets, Jr., City Council Committee; Lofton MUR: 6976
Island Developments LLLP; Lofton Island GP, LLC;
Lofton Island Holdings, LLLP

4 **I. INTRODUCTION**

5 The Complaint in this matter alleges that the City Council Committee for Johnny W.
6 Streets, Jr. (the "Streets Committee") violated the Federal Election Campaign Act of 1971, as
7 amended, (the "Act") by accepting contributions from three foreign corporations. The
8 Complaint further alleges that the corporations violated the Act by making the contributions. As
9 support for the allegations, the Complaint attaches excerpts from the Streets Committee's
10 financial disclosures that show the receipt of \$3,000 in contributions from three entities with
11 addresses in Canada.

12 The Respondents have provided documentation showing that the contributing entities
13 were formed and registered in Florida. Moreover, they assert that the Streets Committee
14 properly reported the contributions, and that it refunded them days after learning that they might
15 be illegal.

16 Based on the available information, the Commission exercises its prosecutorial discretion
17 to dismiss the allegations that the Respondents violated the Act by making or receiving
18 prohibited foreign national contributions, and closes the file.

19 **II. FACTUAL BACKGROUND**

20 In 2015, Johnny W. Streets, Jr., ran for reelection to the City Council of Fort Myers,
21 Florida. The Streets Committee itemized its contributions and expenditures in "Treasurer's
22 Reports" filed with the Fort Myers City Clerk's Office.¹ In one such report, the Streets

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1 Committee disclosed the receipt of separate \$1,000 contributions on August 24, 2015, from three
2 entities — Lofton Island Developments LLLP; Lofton Island GP, LLC; and Lofton Island
3 Holdings, LLLP (collectively, the “Lofton Entities”).² The Streets Committee listed the same
4 Nova Scotia, Canada, address for each of the Lofton Entities.³

5 Streets was reelected on September 15, 2015. On October 14, 2015, the *Fort Myers*
6 *News-Press* reported that the Streets Committee violated federal campaign finance laws by
7 accepting contributions from the Lofton Entities, which it described as “tied to . . . an address in
8 Nova Scotia, Canada.”⁴ The article, which is attached to the Complaint, described the Streets
9 campaign as having been unaware of any problems associated with the contributions and willing
10 to return the money.⁵

11 The Complaint claims that each of the contributions at issue came “from a foreign
12 company,” based on the Canadian address listed in the Streets Committee’s Treasurer’s Report.⁶
13 Accordingly, the Complaint alleges that the Lofton Entities violated the Act’s prohibition on
14 foreign national contributions, and that the Streets Committee violated the Act by accepting such
15 contributions.⁷

16 The Streets Committee asserts that it disclosed all details about the contribution as
17 required by law and explains that the Canadian address the Committee reported for each of the

² *Id.*, Attach. (Campaign Treasurer’s Report).

³ *Id.*

⁴ See Compl., Attach. (Cody Dulaney, *Campaign Laws Violated in Fort Myers, Money to Be Given Back*, FORT MYERS NEWS-PRESS, Oct. 14, 2015).

⁵ *Id.*

⁶ Compl. at 1.

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1 Lofton Entities was taken from the contribution checks.⁸ In its Response, which includes
2 affidavits from Streets and the Committee's treasurer, the Streets Committee states that it was
3 first alerted that the contributions might have been illegal two days before the article was
4 published, when a reporter and the City Clerk's Office contacted Streets.⁹ The Committee
5 subsequently issued refund checks to the Lofton Entities on October 16, 2015, using surplus
6 campaign funds, which the Lofton Entities deposited.¹⁰

7 The Respondents explain that the Lofton Entities were all formed and registered in
8 Florida, and that the contributions were made from bank accounts in Miami.¹¹ The Lofton
9 Entities assert that their primary purpose is to own and operate a high-rise development project
10 in Streets's district.¹² The Lofton Entities further state that the funds contributed to the Streets
11 Committee originated from income generated in Florida and were "not financed by any of the
12 [entities'] foreign owners."¹³

⁸ Streets Resp. at 2 (Nov. 17, 2015).

⁹ *Id.*

¹⁰ *Id.* at 2-3; Lofton Entities Resp. at 2 (Nov. 24, 2015).

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¹³ *Id.* at 2. The Response does not provide a full explanation of the Lofton Entities' ownership or governance, but does note that Neil Morley serves as the Manager of Lofton Island GP LLC, the general partner of Lofton Island Holdings LLLP and the President of Lofton Island Developments GP LLC. *Id.* at 1. Public records indicate that Morley lives in Canada. *See, e.g.,* Lofton Island Devs. GP LLC, 2016 Fla. Ltd. Liab. Co. Annual Report, Apr. 20, 2016 (identifying Morley as "President" with an address in Nova Scotia, Canada). The Lofton Entities' current Annual Reports also provide a Canadian address for every listed manager and nearly every partner. *See* Lofton Island Devs. LLLP, 2016 Fla. Ltd. P'ship Annual Report, Apr. 23, 2016; Lofton Island GP LLC, 2016 Fla. Ltd. Liab. Co. Annual Report, Apr. 23, 2016; Lofton Island Holdings LLLP, 2016 Fla. Ltd. P'ship Annual Report, Apr. 23, 2016.

III. LEGAL ANALYSIS

The Act and Commission regulations prohibit a foreign national from making a contribution — directly or indirectly through any other person — in connection with an election to any political office.¹⁴ The term “foreign national” includes “a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”¹⁵ The Commission’s regulations further provide that a “foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any . . . corporation . . . with regard to . . . election-related activities.”¹⁶ This prohibition includes “decisions concerning the making of contributions, donations, expenditures, or disbursements.”¹⁷ Unlike most other provisions of the Act, the prohibition against contributions by foreign nationals applies to any election for political office, including state and local offices.¹⁸

Because foreign nationals are not permitted to make direct or indirect contributions, in determining whether a domestic subsidiary or affiliate of a foreign national corporation is permitted to make contributions (where corporate contributions are otherwise permitted), the Commission has considered two factors — the source of the funds and the nationality status of

¹⁴ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c). A “foreign national” is an individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence. 52 U.S.C. § 30121(b).

¹⁵ 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

¹⁶ 11 C.F.R. § 110.20(i).

¹⁷ *Id.*

¹⁸ *United States v. Kanchanalak*, 192 F.3d 1037, 1049 (D.C. Cir. 1999) (concluding that the Commission has consistently interpreted 2 U.S.C. 441e (now 52 U.S.C. § 30121) as applicable to federal, state, and local elections).

1 the decision-makers involved in the contribution process.¹⁹ The Commission has not permitted
2 domestic corporations to make contributions where the funds originated with a foreign national
3 corporation on the basis that so doing would permit the latter to make indirect contributions in
4 violation of the Act.²⁰ And even where the funds used for political contributions by a domestic
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6 decision-makers in assessing the legality of the contributions. The Commission has conditioned
7 approval of contributions by domestic subsidiaries of foreign nationals by requiring that foreign
8 nationals not participate in any way in the decision-making process as to the contributions.²¹

9 The Complaint alleges that the Lofton Entities are foreign nationals because, according to
10 the contribution checks, each has a Canadian address. The Respondents have countered this
11 allegation by submitting documentation demonstrating that the Lofton Entities were formed and
12 registered in Florida and asserting that they "primarily operate" there.²² Accordingly, although
13 they have not offered an explanation for the address listed on the checks, the entities themselves
14 do not appear to be foreign nationals under the Act. The Lofton Entities further assert that the
15 funds contributed to the Streets campaign "were from income generated in the State of Florida
16 and not financed by any of the foreign owners."²³ They do not provide any further explanation,

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²⁰ See, e.g., Advisory Op. 1989-20 (Kuilima); AO 2006-15.

²¹ See, e.g., AO 1989-20 at 2 ("[N]o director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making the proposed contributions."); First Gen. Counsel's Rpt. at 5, MUR 6093 (concluding that the Act was violated where foreign company's "Board of Directors directly participated in determining whether to continue the political contributions policy of its subsidiaries").

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²³ Lofton Entities Resp. at 2.

1 however, including whether they are otherwise significantly funded by foreign national parent
2 companies. Even if the Lofton Entities did use funds derived exclusively from domestic sources,
3 the record provides no information identifying the decision-makers involved in the contribution
4 process, including whether foreign nationals were involved. And as discussed above, the
5 available information indicates that all of the reported officers for the Lofton Entities have
6 Canadian addresses. The record therefore does not conclusively establish whether the Lofton
7 Entities violated the Act by contributing to the Streets Committee.

8 The Act also prohibits persons from knowingly soliciting, accepting, or receiving a
9 contribution or donation from a foreign national.²⁴ The Complaint alleges that the Streets
10 Committee violated the Act by accepting the Lofton Entities' contributions. Just as the record
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18 determine whether foreign nationals participated in the decision to make the contributions (or

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²⁵ The Commission's regulations provide that "knowing" acceptance of a foreign national contribution in violation of the Act includes circumstances in which a person is "aware of facts that would lead a reasonable person to inquire whether the source of funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry." 11 C.F.R. § 110.20(a)(4)(iii). Here, the Streets Committee's contribution records indicate that it was aware that the Lofton Entities' contribution checks displayed a Canadian address, which likely would have led a reasonable person to inquire whether the contributions came from a foreign national.

1 subsidized the contributions themselves) such that the Respondents did in fact violate the Act.

2 Further, the Streets Committee promptly issued full refunds of the contributions as soon as it

3 recognized that they might be prohibited.

4 Based on these circumstances, and in furtherance of the Commission's priorities relative

5 to other matters, the Commission exercises its prosecutorial discretion and dismisses the alleged

6 violations of 52 U.S.C. § 30121 and 11 C.F.R. § 110.20 as to the Streets Committee and the

7 Lofton Entities.²⁶

²⁶ See *Heckler v. Chaney*, 470 U.S. 821 (1985).